

[Filed 12-15-08]

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

vs.

ROGERS AUTOMATED ENTRANCES, INC.,

Defendant.

LAW NO. CV7490

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of

Iowa, and for claim against Defendant Rogers Automated Entrances, Inc., states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Rogers Automated Entrances, Inc., for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, and proceeded with the excavations without any underground facilities having been located and marked.

**Parties**

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.
4. Defendant Rogers Automated Entrances, Inc. is an Iowa corporation with its home office located at 1305 1<sup>st</sup> Avenue North, Altoona, Polk County, Iowa.

## Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties." Iowa Code § 480.1(10).

## **Jurisdiction**

10. Iowa Code chapter 480, commonly referred to as the "Iowa One Call" statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location inside of a city shall include:

1. a street address or block and lot numbers, or both, of the proposed area of excavation;
2. the name and address of the excavator;
3. the excavator's telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and
8. if known, the name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to

each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

16. Iowa Code section 480.6(1)(b) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to underground facilities other than natural gas and hazardous liquid pipelines, in an amount not to exceed One Thousand Dollars (\$1,000.00) for each violation for each day the violation continues, up to a maximum of Twenty Thousand Dollars (\$20,000.00).

17. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

18. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

## **Facts**

19. On June 5, 2008, the defendant conducted an excavation consisting of a three-foot deep trench using a backhoe at 1300 Metro East Drive, Pleasant Hill, Polk County, Iowa. The defendant did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

20. Magellan Midstream Partners, L.P. is the owner and operator of four hazardous liquids underground pipelines, which run beneath the property where the excavation occurred. MP #7 is a 12" diameter pipeline carrying propane at 323 pounds per square inch (psi) pressure, between Des Moines and Minnesota. MP #5 is an 8" diameter pipeline carrying propane at 515 psi, between Des Moines and Chicago, Illinois. Rogers' excavation was within 23 feet of the MP #7 and within 50 feet of the MP #5. Propane is an explosive and highly flammable material.

21. MP #4 is a 12" diameter pipeline carrying refined petroleum fuels at 779 psi, between Des Moines and Minnesota. MP #6 is a 12" diameter pipeline carrying refined petroleum fuels at 753 psi, between Des Moines and Chicago, Illinois. Roger's excavation was within 40 feet of MP #4 and 60 feet of MP #6. Refined petroleum fuel is explosive and highly flammable.

22. Koch Pipeline Company, L.P. is the owner and operator of a hazardous liquids pipeline which runs beneath the property where the excavation occurred. The pipeline is 24" in diameter carrying crude oil at 400 psi. The pipeline provides crude oil to refineries in the Twin Cities area. Roger's excavation was within 70 feet of the Koch hazardous liquids pipeline.

23. Also running beneath the property where the excavation occurred were three underground fiber optics lines, two owned by Verizon Wireless and one owned by Level III.

24. Digging with a backhoe constitutes "excavation" as defined in Iowa Code section 480.1(4).

25. At all material times hereto, defendant was an "excavator" as defined in Iowa Code section 480.1(5).

26. A buried hazardous liquids pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

27. A buried fiber optics line is an "underground facility" as defined in Iowa Code section 480.1(10).

28. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

#### **Violations**

29. On June 5, 2008, Defendant Rogers Automated Entrances, Inc. engaged in an excavation at 1300 Metro East Drive, Pleasant Hill, Polk County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

#### **Prayer for Relief**

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Rogers Automated Entrances, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), involving hazardous liquids pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. assess a civil penalty against Defendant Rogers Automated Entrances, Inc., pursuant to Iowa Code section 480.6(1)(b) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), involving fiber optics lines, not to exceed One Thousand Dollars (\$1,000.00) for each day of each such violation; and

c. issue a permanent injunction enjoining Defendant Rogers Automated Entrances, Inc. from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989 or 811), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa



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